

REMARKS / ARGUMENTS

I. Background

Claims 1-4, 6-10, 12-24, 27, 29-32, 34-39 and 41-45 were pending in the application. The Office Action raised various rejections to the pending claims over the art based on 35 U.S.C. §§ 102 and 103. By this response, Applicant has amended claims 1, 12, 21, 32, 41, and 42, cancelled claim 4, and added claims 46-48¹. In view of these amendments and following remarks, claims 1-3, 6-10, 12-24, 27, 29-32, 34-39, and 41-48 are presented for the Examiner's consideration in light of the following remarks.²

II. Rejections on the Merits

A. Rejections Under 35 U.S.C. § 102(b)

Claims 12-20, 21-24, 27, 29-32, 34-39, 44, and 45 were rejected in the Office Action under 35 U.S.C. § 102(b) as anticipated by United States Patent No. 4,550,689 issued to Wolter (*Wolter*)³. Applicant respectfully traverses.

Claim 12 has been amended to recite "a housing ... forming a front portion and a back portion separated by a vertical dividing member," "the heat transfer conduit being located in the back portion," "the fuel burner being located in the back portion," and "a valve control assembly located in the front portion fluidly connected to the fuel burner." Applicant respectfully submits that the Office Action has not cited, nor can Applicant find, any portion of *Wolter* that discloses these limitations. Rather, *Wolter* discloses "a large upper portion and a small lower portion." *Wolter*, Abstract. Applicant respectfully submits that *Wolter*'s "upper" and "lower" portions are

¹ Support for the claim amendments and new claims can be found throughout the specification.

² Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicants request that the Examiner carefully review any references discussed below to ensure that Applicants' understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

³ Although the prior art status of the cited art in this and the remaining rejections is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

not the same as "front portion and a back portion separated by a vertical dividing member," as recited in claim 12.

Claim 21 has been amended to recite "a housing having a plurality of walls including a top wall and a bottom wall, the top wall and the bottom wall each having a plurality of openings formed therein ... the housing being configured to allow the incoming air to flow around the at least one fuel burner and through the housing substantially unobstructed." Applicant respectfully submits that the Office Action has not cited, nor can Applicant find, any portion of *Wolter* that discloses these limitations. Rather, *Wolter* discloses the "electric solenoid gas valve 20," the "thermal temperature override switch 39," and the "optical flame sensor 47" are "positioned in the lower compartment below several orifice openings in dividing wall 17." *Wolter* col. 7, lines 6-12. Applicant respectfully submits that at least *Wolter*'s electric solenoid gas valve 20, thermal temperature override switch 39, and optical flame sensor 47 would substantially obstruct air flow rather than "allow[ing] the incoming air to flow around the at least one fuel burner and through the housing substantially unobstructed," as recited in claim 21.

Claim 32 recites that "at least one fuel burner being independently operable." Applicant respectfully submits that the Office Action has not cited, nor can Applicant find, any portion of *Wolter* that discloses this limitation. Rather, the Office Action admits, and Applicant agrees, that "*Wolter* does not disclose that each of the plurality of burners is independently operable." Office Action, page 4.

Consequently, *Wolter* does not disclose each and every limitation of claims 12, 21, and 32. Accordingly, Applicant respectfully requests the withdrawal of the rejection of claims 12-20, 21-24, 27, 29-32, 34-39, 44, and 45 under Section 102.

B. Rejections Under 35 U.S.C. § 103(a)

1. Rejection of Claims 1-4, 6-10, and 41-43

Claims 1-4, 6-10, and 41-43 were rejected in the Office Action under 35 U.S.C. § 103(a) as being unpatentable over *Wolter* in view of United States Patent No. 3,935,855 to van Vliet (*van Vliet*). Applicant respectfully traverses.

Claim 1 has been amended to recite that "substantially all of the at least one heat transfer conduit [is] disposed about a horizontal axis in the housing" and that the "at least one heat

transfer conduit [has] a substantially uncoiled output portion and a substantially uncoiled input portion." Applicant respectfully submits that the Office Action has not cited, nor can Applicant find, any portion of *Wolter* that discloses these limitations. Rather, the Office Action asserts that *Wolter* "discloses ... the coiled tubing 34 is disposed about a horizontal axis in the housing 1." Office Action, page 2.

However, as the Office Action apparently asserts that the coiled tubing 34 is the same as Applicant's "at least one heat transfer conduit," as recited in claim 1, Applicant respectfully submits that the coiled tubing 34 does not have "a substantially uncoiled output portion and a substantially uncoiled input portion," as recited in claim 1. Rather, the heated water flows through the coiled tubing 34 and out through the coiled tubing 31. *See Wolter*, col. 5, lines 26-43. Applicant respectfully submits that the **coiled** tubing 31 is not "a substantially **uncoiled** output portion," as recited in claim 1. Furthermore, the Office Action has not cited, nor can Applicant find any portion of *van Vliet* that discloses, teaches, or suggests these limitations.

Claim 1 has also been amended to recite "a housing ... forming a front portion and a back portion separated by a vertical dividing member." As shown above, *Wolter* fails to disclose, teach, or suggest this limitation. Applicant respectfully submits that the Office Action has not cited, nor can Applicant find, any portion of *van Vliet* that teaches or suggests this limitation.

Claim 1 has further been amended to recite "a housing having a plurality of walls including a top wall and a bottom wall, the top wall and the bottom wall each having a plurality of openings formed therein, ... the housing being configured to allow the incoming air to flow around the at least one fuel burner and through the housing substantially unobstructed." As shown above, *Wolter* fails to disclose, teach, or suggest these limitations. Applicant respectfully submits that the Office Action has not cited, nor can Applicant find, any portion of *van Vliet* that teaches or suggests these limitations.

Consequently, the Office Action's proposed combination of *Wolter* and *van Vliet* does not disclose, teach, or suggest each and every limitation of claim 1. Accordingly, Applicant respectfully requests withdrawal of the rejection of claims 1-4 and 6-10 under Section 103.

As a final matter, the Office Action has not provided grounds for rejection for claims 41-43. However, as claims 41-43 depend from and contain all of the limitations of claim 1, Applicant respectfully requests withdrawal of the rejection of claims 41-43.

III. New Claims 46-48

New claims 46-48 depend from claims 1, 12, and 21 respectively. Therefore, Applicant respectfully submits that claims 46-48 are also allowable.

IV. Summary and Conclusion

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at 801-533-9800.

Dated this 20th of May, 2008.

Respectfully submitted,

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